

Resolution No.:	<u>18-10</u>
Introduced:	<u>December 9, 2014</u>
Adopted:	<u>December 9, 2014</u>

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DOT Docket No. AB737
Abandonment Portion of 10-Foot Alley
West Chevy Chase Heights Subdivision, Bethesda

Background

1. By letter dated January 28, 2013 from Mr. and Mrs. Kenneth A. Blumenstock, the Applicants, a request was made for the County to abandon a five-foot portion of a 10-foot alley in the West Chevy Chase Heights Subdivision of Bethesda. The portion of the alley right-of-way for which abandonment is sought adjoins property owned by the Applicants and is unimproved.
2. A Public Hearing to consider the abandonment proposal was held on May 15, 2013 by the designee of the County Executive.
3. Verizon had no objection.
4. Washington Suburban Sanitary Commission had no objection.
5. Washington Gas did not respond within 60 days and therefore, concurrence is presumed.
6. PEPCO did not respond within 60 days and therefore, concurrence is presumed.
7. The Montgomery County Police Department did not respond within 60 days and therefore, concurrence is presumed.
8. The Montgomery County Planning Board supported the abandonment request and concluded that the right-of-way is not necessary for present or future public use.
9. The Department of Transportation (DOT) recommended approval conditioned upon: a) the Applicants must grant easements to the County for the maintenance of storm drainage facilities and any public utility affected and/or relocate these facilities and grant easements, as applicable; and b) the Applicant must file a new record plat incorporating the former portion of the right-of-way into the Applicants' lot.
10. The Department of Fire and Rescue Services had no objection.
11. The County Executive recommends approval of the proposed abandonment.

Action

The County Council for Montgomery County, Maryland, finds that a five-foot portion of a 10-foot alley adjoining the rear lot line of Lot 15 in Block 12 (4400 West Virginia Avenue) in the West Chevy Chase Heights Subdivision of Bethesda proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment subject to the following conditions which must be satisfied at Applicants' sole cost and expense prior to the abandonment becoming effective:

1. The Applicants must grant easements to the County for the maintenance of storm drainage facilities and public utilities affected, and/or relocate these facilities and grant easements, as applicable;
2. The Applicants must file a new record plat incorporating the former portion of the right-of-way into the Applicants' lot;
3. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area; and
4. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.


Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject : Abandonment of 10-Foot Alley West Chevy Chase Heights Subdivision, Bethesda	Executive Order No. 68-13	
Originating Department: Transportation	Department Number AB 01-13	Effective Date 3/14/13

AB737

1. Pursuant to Section 49-62 of the Montgomery County Code (2004) as amended, the County Executive or his Designee shall conduct a Public Hearing

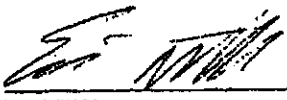
at 7:00 p.m. on Wednesday May 15, 2013
Executive Office Building Lobby Auditorium
101 Monroe Street
Rockville, Maryland 20850

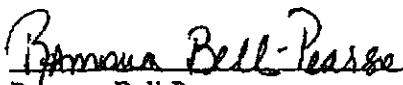
to consider an application received from Mr. Kenneth A. Blumenstock, the Applicant, seeking abandonment of a 5 foot wide portion of a 10 foot wide alley adjoining the Applicant's property 4400 West Virginia Avenue, Bethesda, Maryland 20814 (Lots 15 and 16 in Block 12, West Chevy Chase Heights Subdivision Plat No. 186).

2. After the aforesaid Hearing, the Hearing Officer shall report his findings and recommendations to the County Executive for further consideration as prescribed by County Code.

Approved as to Form and Legality
Office of the County Attorney

APPROVED

By: 
Eric C. Willis
Assistant County Attorney
Date: 3/5/13


Ramona Bell-Pearson
Assistant Chief Administrative Officer
Date: March 14, 2013

Distribution:

Department of Transportation
Department of Finance
Office of the County Attorney



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

IN THE MATTER OF: Abandonment Petition AB737

Petition for the Abandonment of a Five-foot Portion of a 10-foot Alley in the West Chevy Chase Heights Subdivision in Bethesda, Maryland

BEFORE: Michael L. Subin, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

The property owners, Mr. and Mrs. Kenneth A. Blumenstock (the "Applicants"), submitted a request, dated January 28, 2013, for the abandonment of a five-foot portion of an unimproved 10-foot alley contiguous to their property in the West Chevy Chase Heights Subdivision in Bethesda, Maryland. (Exhibit 1)

Executive Order 68-13, authorizing the hearing, was issued on March 14, 2013. (Exhibit 2) Notices were sent to nearby civic associations, residents, public utilities, and public agencies. (Exhibit 3) Public notice of the hearing appeared in *The Montgomery Sentinel* on May 2 and 9, 2013. (Exhibit 4) Signage was posted at the site of the abandonment on April 19, 2013. (Exhibit 8) A public hearing was held on May 15, 2013, at approximately 7:00 p.m., in the Executive Office Building Lobby Auditorium, 101 Monroe Street, Rockville, Maryland.

II. Summary of Testimony and Evidence

At the hearing on the proposed abandonment, Mr. Michael Cassidy, representing the Montgomery Department of Transportation ("MCDOT"), testified on behalf of the Department. Mr. Cassidy read into the record the evidence and exhibits required by Montgomery County Code (2004) as amended. He then testified that the Applicants wished to have the portion of the alley abandoned in order to build an addition to the rear of their house. The Applicant had been told that, under current circumstances, their residence is too close to the right-of-way (the "ROW") and that additional space is needed in order to meet the setback requirements. Mr. Cassidy testified that the subdivision was established by Plat No. 186 in 1916, that the ROW is



unimproved, and there are no plans to pave it. He further stated that, over the years, adjoining property owners have encroached upon the ROW with fences, tool sheds, and plantings.

In addition to reading the exhibits into the record, Mr. Cassidy testified that his office requested comments from the public, government agencies, and public utility companies in fulfillment of the requirements of the Montgomery County Code, Section 49-62 (2004) as amended.

Testimony

Although the Applicants attended the Hearing, neither they nor any others provided oral testimony.

Written Comments

Comments were provided by several public agencies and utilities:

1. By e-mail dated March 26, 2013, Verizon stated that it had no facilities in the area designated for the abandonment and had no objections (Exhibit 6);
2. WSSC, via e-mail, dated March 27, 2013, stated that it had no facilities in the area and would consent to the abandonment (Exhibit 7);
3. MCDOT, via a memo dated May 15, 2013 recommended approval of the application with the following conditions:
 - a. The Applicant must grant easements to the County for the maintenance of storm drainage facilities and public utilities affected and/or relocate these facilities and grant easements, as applicable;
 - b. The Applicant must file a new record plat incorporating the former portion of the right-of-way into applicant's lot. (Exhibit 9);
4. The Montgomery County Department of Fire and Rescue Services, by e-mail dated March 19, 2013, stated that it had no objection to the abandonment (Exhibit 10); and,
5. The Montgomery County Planning Department supported the Application and concluded that the ROW is not necessary for present or future public use. (Exhibit 11)

Neither Washington Gas, Pepco, nor the Montgomery County Police Department provided any comments. No comments were received from local residents or the civic association.

III. Conclusions and Recommendations

The abandonment of road rights-of way is governed by the provisions of section 49-63, Montgomery County Code (2004) as amended. Section 49-63 permits application for abandonment of a right-of way by any person or government agency, provides for public agency and utility company review, and requires a public hearing with notice. I find that the hearing and notice procedures have been satisfied, and that the public, public agencies, and utility companies have been given an opportunity to review the petition for abandonment and closure as described above.

Section 49-63 allows abandonment if the right-of-way is not needed for public use or if the abandonment is necessary to protect the health, safety and welfare of the residents in the neighborhood. In determining health, safety and welfare issues, the Council may consider: 1) any adopted land use plan applicable to the neighborhood; 2) the safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives in the immediate neighborhood for local and through traffic; or, 3) changes in fact and circumstances since the original dedication of the right-of way. In this case, the abandonment and partial closure turn on whether or not the right-of-way is needed for public use and changes in fact and circumstance. I find that it is not needed for public use and that there have been no changes in fact and circumstances since the right-of-way was created. Therefore, the application meets the criteria of section 49-63.

However, approval is predicated on the satisfaction of the following conditions:

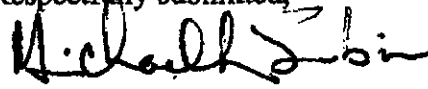
1. The Applicant must grant easements to the County for the maintenance of storm drainage facilities and public utilities affected, and/or relocate these facilities and grant easements, as applicable;
2. The Applicant must file a new record plat incorporating the former portion of the right-of-way into applicant's lot.

Signature Page Follows

Recommendation

Based on a thorough review of all testimony and evidence on the record, I conclude that the proposed abandonment and partial closure of the right-of-way in the Alley to the West Chevy Chase Heights Subdivision in Bethesda, Maryland should be APPROVED because it is not needed for public use and there is no change in fact and circumstances since the right-of-way was created.

Respectfully submitted,

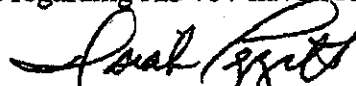


Michael L. Subin

October 23, 2013

Date

The Public Hearing Officer's Recommendations regarding AB 737 have been reviewed and are APPROVED.



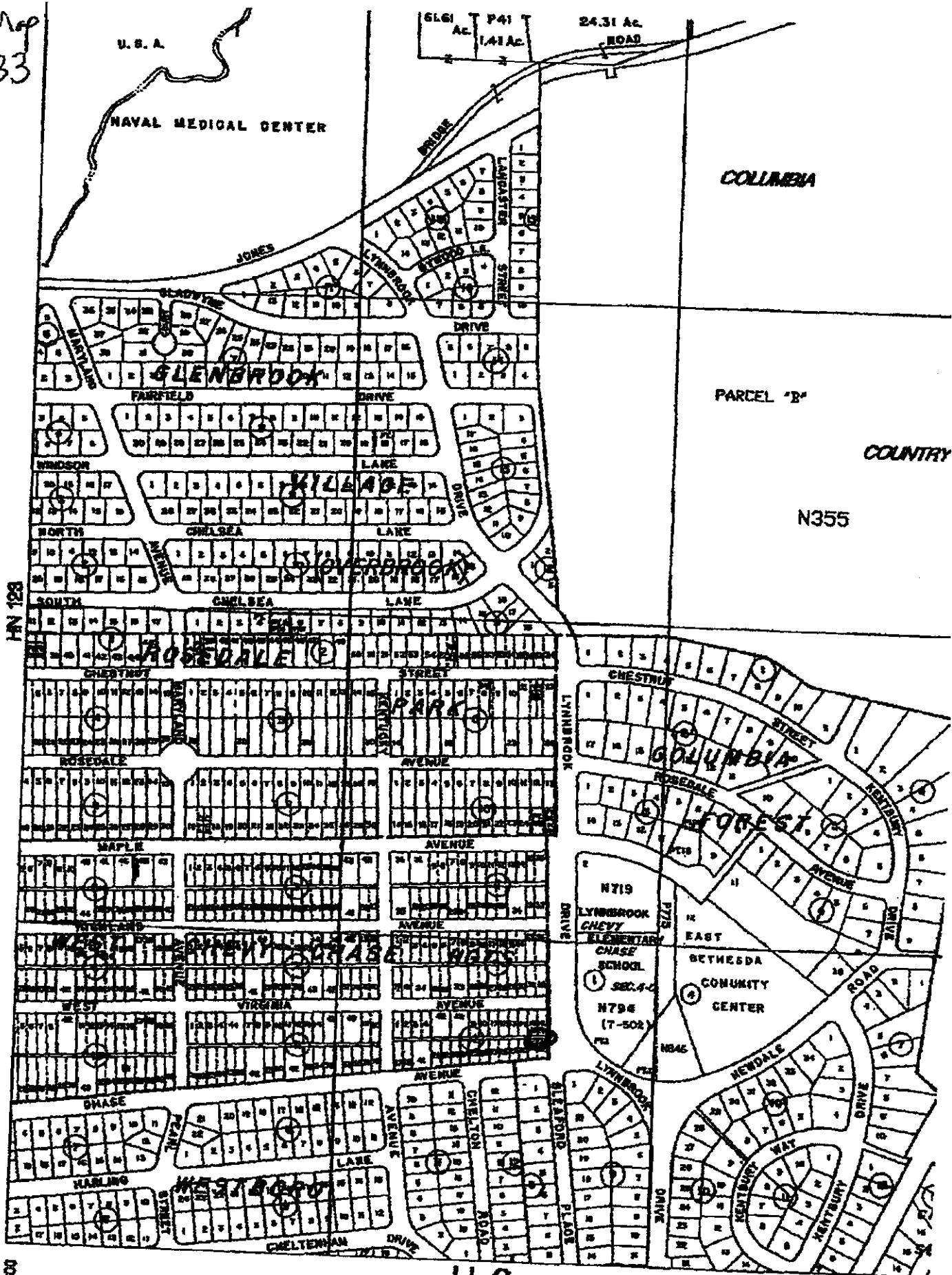
Isiah Leggett, County Executive

Nov 6, 2013

Date

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Tax Map
HN 33



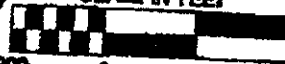
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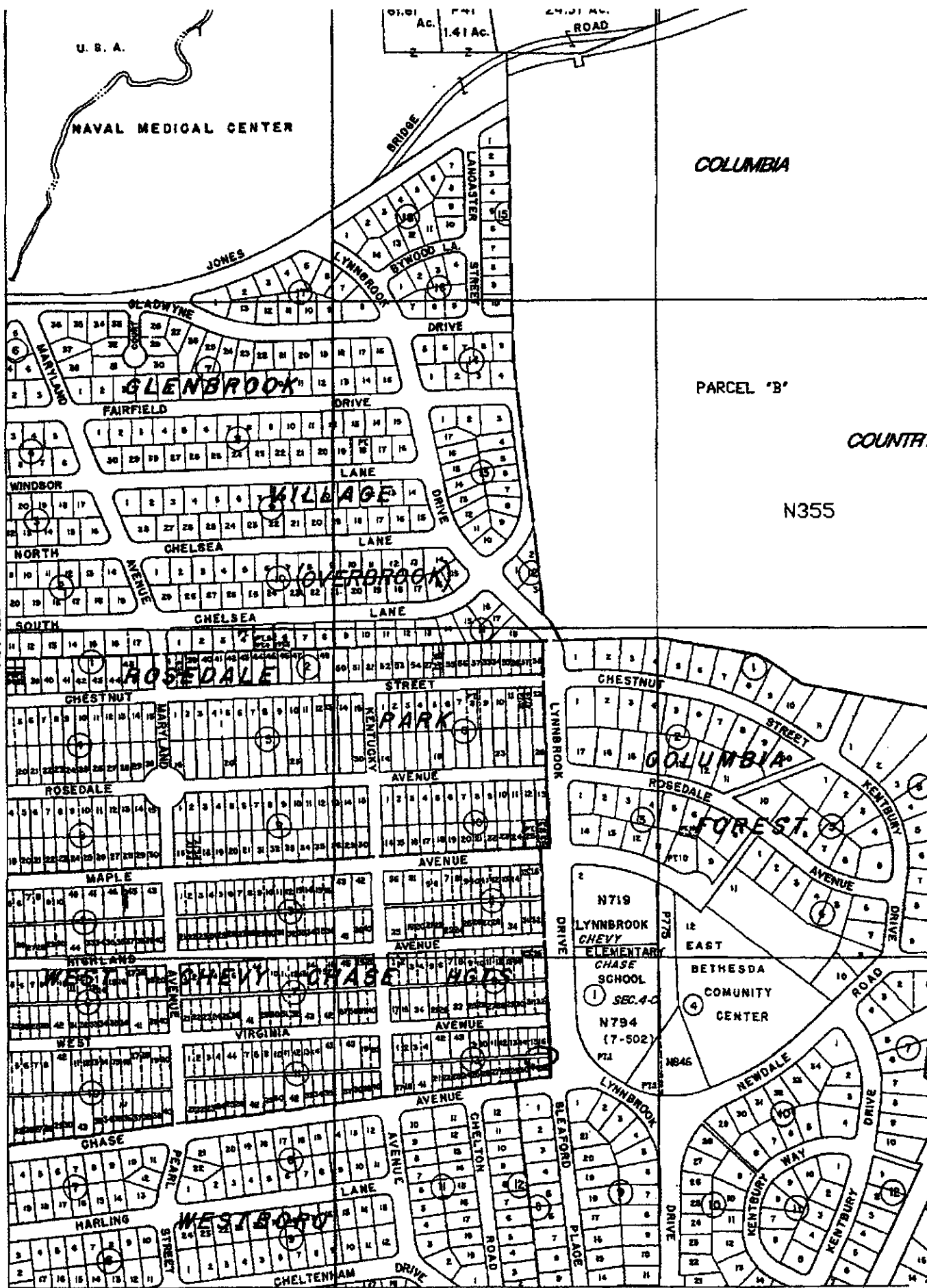
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SCALE IN FEET



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FEDERAL HIGHWAY ADMINISTRATION
The Maryland Department of Planning is responsible for the development and implementation of the State's transportation planning process. It works closely with the Federal Highway Administration (FHWA) and the Maryland State Highway Administration (SHA) to ensure that the State's transportation system is planned and built in a way that meets the needs of the State's residents and businesses. The Department also provides technical assistance to local governments in the development of their transportation plans.

Tax Map
HN 33



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SCALE IN FEET



MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPS SECTION
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Room 2000, 1000 North Pointe Drive, Baltimore, MD 21201-2000.